

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES ALLEN CLARK,
Petitioner,

v.

ERIC ARNOLD,
Respondent.

Case No. [14-cv-05285-JD](#)

**ORDER DISMISSING PETITION WITH
LEAVE TO AMEND**

James Allen Clark, a California prisoner, filed a pro se petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. He has paid the filing fee.

DISCUSSION

I. STANDARD OF REVIEW

This Court may entertain a petition for writ of habeas corpus “in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States.” 28 U.S.C. § 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)).

II. LEGAL CLAIMS

Clark was convicted in 1989 in Sonoma County Superior Court which is in this district. He is currently incarcerated in California State Prison Solano, which is in the Eastern District of California. He states that he was sentenced to life without parole. In this petition, he argues that he was sentenced under the Indeterminate Sentencing Law (“ISL”) which is governed by the Determinate Sentencing Law (“DSL”) adopted in 1977. He states that the court, Bureau of Parole Hearings (“BPH”), and prison are using repealed legal standards to set his release date.

Clark’s specific claim is not clear. He states that he was sentenced to life without parole, so he will not be paroled. Assuming he is entitled to a parole date, Clark has not specifically articulated a federal constitutional violation. To the extent he has been denied parole by the BPH, he must bring that claim in the district where the denial occurred. He is also advised that on January 24, 2011, the United States Supreme Court issued *Swarthout v. Cooke*, 562 U.S. 216 (2011). The Supreme Court held that “[i]n the context of parole . . . the procedures required [by the due process clause] are minimal . . . an opportunity to be heard and . . . a statement of the reasons why parole was denied . . . ‘[t]he Constitution . . . does not require more.’” *Swarthout*, 562 U.S. at 220. As long as the petitioner received at least that much process, the federal court’s habeas review is at an end. *Id.* If Clark’s sentence provides the possibility of parole, but does not guarantee a parole date, it carries with it the potential that he could serve the entire term. *See Pearson v. Muntz*, 639 F.3d 1185, 1187 (9th Cir. 2011) (explaining that prisoners serving indeterminate life prison sentences [i.e., those whose life sentences do not include ‘without the possibility of parole’] may serve up to life in prison, but may be considered for parole after serving minimum terms of confinement). The petition is dismissed with leave to amend to address the deficiencies discussed above.

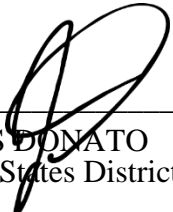
CONCLUSION

1. The petition is **DISMISSED** with leave to amend. The amended petition must be filed within **twenty-eight (28) days** of the date this order is filed and must include the caption and civil case number used in this order and the words amended petition on the first page.

2. Failure to file an amended petition will result in dismissal of this action

IT IS SO ORDERED.

Dated: September 29, 2015



JAMES DONATO
United States District Judge

United States District Court
Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JAMES ALLEN CLARK,
Plaintiff,
v.
ERIC ARNOLD,
Defendant.

Case No. [14-cv-05285-JD](#)

CERTIFICATE OF SERVICE

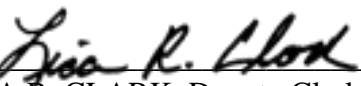
I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on September 29, 2015, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

James Allen Clark ID: E12050
California State Prison, Solano III
P.O. Box 4000 Facility AG-113
Vacaville, CA 95696-4000

Dated: September 29, 2015

Susan Y. Soong
Clerk, United States District Court

By: 
LISA R. CLARK, Deputy Clerk to the
Honorable JAMES DONATO